

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 45

Introduced by Assembly Member Blakeslee

December 1, 2008

An act ~~relating to energy~~ to add Article 2.11 (commencing with Section 65893) to, and to repeal the heading of Article 2.11 (commencing with Section 65892.13) of, Chapter 4 of Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Blakeslee. Distributed generation: small wind energy systems.

The California Renewables Portfolio Standard Program requires that ~~a retail seller of electricity~~ *an electrical corporation*, as defined, ~~purchase~~ *procure* a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard), *subject to specified limits*. The renewables portfolio standard requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

~~This bill would state the intent of the Legislature to encourage local agencies to support the state's ambitious renewable energy procurement requirements by developing and adopting ordinances that facilitate the installation of distributed generation small wind energy systems.~~

This bill would authorize a local agency to provide, by ordinance, for the installation of small wind energy systems, as specified, and to establish a process for the issuance of conditional use permits for these systems. The bill would also authorize a local agency to impose conditions on the installation of these systems, but would prohibit the local agency from imposing conditions relating to specified aspects of these systems that are more restrictive than certain specified requirements of and conditions upon these systems. The bill would require a local agency that has not adopted an ordinance providing for the installation of these systems, and receives an application for the installation of a small wind energy system after July 1, 2010, but before it adopts an ordinance providing for the installation of these systems, to approve the application through a nondiscretionary administrative action. The bill would authorize a local agency to require a small wind energy system to be removed if it remains inoperable for 12 consecutive months. The bill would declare that it is the policy of the state to promote and encourage the use of distributed renewable energy systems and to limit obstacles to their use.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The heading of Article 2.11 (commencing with*
2 *Section 65892.13) of Chapter 4 of Division 1 of Title 7 of the*
3 *Government Code is repealed.*

4
5 ~~Article 2.11. Wind Energy~~

6
7 *SEC. 2. Article 2.11 (commencing with Section 65893) is added*
8 *to Chapter 4 of Division 1 of Title 7 of the Government Code, to*
9 *read:*

10
11 Article 2.11. Wind Energy

12
13 65893. (a) *The Legislature finds and declares all of the*
14 *following:*

15 (1) *Wind energy is an abundant, renewable, and nonpolluting*
16 *energy resource.*

1 (2) Wind energy, when converted to electricity, reduces our
2 dependence on nonrenewable energy resources, reduces air and
3 water pollution that result from conventional sources burning
4 fossil fuels, and reduces emissions of greenhouse gases.

5 (3) Distributed generation small wind energy systems also
6 enhance the reliability and quality of electricity delivered by the
7 electrical grid, reduce peak power demands, increase in-state
8 electricity generation, diversify the state's energy supply portfolio,
9 and make the electricity supply market more competitive by
10 promoting consumer choice.

11 (4) Small wind energy systems designed for onsite home, farm,
12 and small commercial use are recognized by the Legislature and
13 the Energy Commission as an excellent technology to help achieve
14 the goals of increased in-state electricity generation, reduced
15 demand on the state electrical grid, increased consumer energy
16 independence, and nonpolluting electricity generation.

17 (5) It is the intent of the Legislature to encourage local agencies
18 to support the state's ambitious renewable energy procurement
19 requirements by developing and adopting ordinances that facilitate
20 the installation of small wind energy systems and do not
21 unreasonably restrict the ability of homeowners, farms, and small
22 businesses to install small wind energy systems in zones in which
23 they are authorized by local ordinance.

24 (6) The implementation of consistent statewide standards to
25 achieve the timely and cost-effective installation of small wind
26 energy systems is a matter of statewide concern. It is the intent of
27 the Legislature that this section apply to all local agencies,
28 including, but not limited to, charter cities, charter counties, and
29 charter cities and counties.

30 65894. For purposes of this article, the following terms shall
31 have the following meanings:

32 (1) "Energy Commission" means the State Energy Resources
33 Conservation and Development Commission.

34 (2) "Small wind energy system" means a wind energy
35 conversion system consisting of a wind turbine, a tower, and
36 associated control or conversion electronics, which has a rated
37 capacity of not more than 50 kilowatts per customer site, consistent
38 with the requirements of paragraph (3) of subdivision (b) of Section
39 25744 of the Public Resources Code and that will be used primarily
40 to reduce onsite consumption of utility power.

1 (3) “Tower height” means the height above grade of the fixed
2 portion of the tower, excluding the wind turbine.

3 (4) “Urbanized area” has the same meaning as set forth in
4 Section 65944.

5 65895. (a) A local agency that has not adopted an ordinance
6 providing for the installation of small wind energy systems located
7 outside an urbanized area, but within the local agency’s
8 jurisdiction by January 1, 2010, may adopt such an ordinance at
9 a later date, but the ordinance shall be in accordance with Section
10 65896.

11 (b) A local agency may establish a process for the issuance of
12 conditional use permits for small wind energy systems, subject to
13 all of the following conditions:

14 (1) A local agency shall review an application for a small wind
15 energy system as expeditiously as possible pursuant to the timelines
16 established in the Permit Streamlining Act (Chapter 4.5
17 (commencing with Section 65920)).

18 (2) Fees charged by a local agency to review an application
19 for a small wind energy system shall be determined in accordance
20 with Chapter 5 (commencing with Section 66000).

21 (3) An application for the installation of a small wind energy
22 system submitted between July 1, 2010, and the date of the local
23 agency’s adoption of an ordinance that meets the requirements
24 and conditions of subdivision (b) of Section 65896 shall be
25 approved through a nondiscretionary administrative action by a
26 local agency.

27 65896. (a) A local agency may by ordinance, provide for the
28 installation of small wind energy systems outside an urbanized
29 area, but within the local agency’s jurisdiction.

30 (b) The ordinance may impose conditions on the installation of
31 small wind energy systems that include, but are not limited to,
32 notice, tower height, setback, view protection, aesthetics, aviation,
33 and design safety requirements. However, the ordinance shall not
34 require conditions on notice, tower height, setback, noise level,
35 visual effects, turbine approval, tower drawings, and engineering
36 analysis, or line drawings that are more restrictive than the
37 following requirements and conditions:

38 (1) The parcel where the system is located shall be at least one
39 acre in size and located outside an urbanized area.

1 (2) *Tower heights of not more than 100 feet shall be allowed*
2 *on parcels between one and five acres. On parcels of five acres*
3 *or more, tower height shall not exceed the applicable limits*
4 *established by the Federal Aviation Administration. An application*
5 *shall include evidence that the proposed height of a tower does*
6 *not exceed the height recommended by the manufacturer or*
7 *distributor of the system.*

8 (3) *Setbacks for the system tower shall be no farther from the*
9 *property line than the height of the system, provided the system*
10 *complies with applicable fire setback requirements set forth in*
11 *Section 4290 of the Public Resources Code.*

12 (4) *Decibel levels for the system shall not exceed the lesser of*
13 *60 decibels (dBA), or any existing maximum noise levels applied*
14 *pursuant to the noise element of a general plan for the applicable*
15 *zoning classification in a jurisdiction, as measured at the closest*
16 *neighboring inhabited dwelling, except during short-term events,*
17 *such as utility outages and severe wind storms.*

18 (5) *Notice of an application for installation of a small wind*
19 *energy system shall be provided to property owners within 300*
20 *feet of the property on which the system is to be located.*

21 (6) *The system shall not substantially obstruct views of adjacent*
22 *property owners and shall be placed or constructed below any*
23 *major ridgeline when visible from any scenic highway corridor*
24 *designated pursuant to Article 2.5 (commencing with Section 260)*
25 *of Chapter 2 of Division 1 of the Streets and Highways Code or*
26 *any scenic highway corridor designated by a local agency general*
27 *plan.*

28 (7) *The system shall use a wind turbine that has been approved*
29 *by the Energy Commission as qualifying under its Emerging*
30 *Renewables Program pursuant to Section 25744 of the Public*
31 *Resources Code or has been certified by a national program*
32 *recognized and approved by the commission.*

33 (8) *The application shall include standard drawings and an*
34 *engineering analysis of the system's tower, showing compliance*
35 *with the Uniform Building Code or the California Building*
36 *Standards Code and certification by a professional mechanical,*
37 *structural, or civil engineer licensed by this state. A wet stamp,*
38 *however, shall not be required if the application demonstrates that*
39 *the system is designed to meet the most stringent wind requirements*
40 *(Uniform Building Code wind exposure D), the requirements for*

1 *the worst seismic class (Seismic 4), and the weakest soil class,*
2 *with a soil strength of not more than 1,000 pounds per square foot,*
3 *or other relevant conditions normally required by a local agency.*

4 *(9) The system shall comply with all applicable Federal Aviation*
5 *Administration requirements, including Subpart B (commencing*
6 *with Section 77.11) of Part 77 of Title 14 of the Code of Federal*
7 *Regulations regarding installations close to airports, and the State*
8 *Aeronautics Act (Part 1 (commencing with Section 21001) of*
9 *Division 9 of the Public Utilities Code). A system that complies*
10 *with this subdivision shall be deemed to meet the applicable health*
11 *and safety requirements regarding civil aviation.*

12 *(10) The application shall include a line drawing of the*
13 *electrical components of the system in sufficient detail to allow*
14 *for a determination that the manner of installation conforms to*
15 *the National Electric Code.*

16 *(11) If required by the local agency, the applicant shall provide*
17 *information demonstrating the system will be used primarily to*
18 *reduce onsite consumption of electricity. The local agency may*
19 *also require the application to include evidence, unless the*
20 *applicant does not plan to connect the system to the electricity*
21 *grid, that the electric utility service provider that serves the*
22 *proposed site has been informed of the applicant's intent to install*
23 *an interconnected customer-owned electricity generator.*

24 *(12) If the governing authority of the restricted military airspace*
25 *known as "R-2515" files a detailed diagram of that restricted*
26 *military airspace with a local agency, and if a local agency*
27 *receives an application to install a small wind energy system on*
28 *a site that is within that restricted military airspace, then the local*
29 *agency shall promptly forward a copy of that application to the*
30 *governing authority of that restricted military airspace. If the*
31 *governing authority of the restricted military airspace known as*
32 *"R-2515" provides written comments regarding that application,*
33 *the local agency shall consider those comments before acting on*
34 *the application.*

35 *(13) If a small wind energy system is proposed to be sited in an*
36 *agricultural area that may have aircraft operating at low altitudes,*
37 *the local agency shall take reasonable steps, concurrent with other*
38 *notices issued pursuant to this subdivision, to notify pest control*
39 *aircraft pilots registered to operate in the county pursuant to*
40 *Section 11921 of the Food and Agricultural Code.*

1 (14) Tower structure lighting shall be prohibited unless
2 otherwise required by another provision of law.

3 (15) No climbing apparatus attached to the system shall be
4 located less than 12 feet above the ground, and the system shall
5 be designed to prevent climbing within the first 12 feet.

6 (16) No sign shall be attached to the system if visible from a
7 public road, except for manufacturer or installer identification
8 signs, owner identification signs, or public health and safety signs
9 applicable to the installed system.

10 (17) A small wind energy system shall not be allowed where
11 otherwise prohibited by any of the following:

12 (A) A local coastal program and any implementing regulations
13 adopted pursuant to the California Coastal Act (Division 20
14 (commencing with Section 30000) of the Public Resources Code).

15 (B) The California Coastal Commission, pursuant to the
16 California Coastal Act (Division 20 (commencing with Section
17 30000) of the Public Resources Code).

18 (C) The regional plan and any implementing regulations adopted
19 by the Tahoe Regional Planning Agency pursuant to the Tahoe
20 Regional Planning Compact (Title 7.4 (commencing with Section
21 66800)).

22 (D) The San Francisco Bay Plan and any implementing
23 regulations adopted by the San Francisco Bay Conservation and
24 Development Commission pursuant to the McAteer-Petris Act
25 (Title 7.2 (commencing with Section 66600)).

26 (E) A comprehensive land use plan and any implementing
27 regulations adopted by an airport land use commission pursuant
28 to Article 3.5 (commencing with Section 21670) of Chapter 4 of
29 Division 9 of Part 1 of the Public Utilities Code.

30 (F) The Alquist-Priolo Earthquake Fault Zoning Act (Chapter
31 7.5 (commencing with Section 2621) of Division 2 of the Public
32 Resources Code).

33 (G) A local agency to protect the scenic appearance of the scenic
34 highway corridor designated pursuant to Article 2.5 (commencing
35 with Section 260) of Chapter 2 of Division 1 of the Streets and
36 Highways Code.

37 (H) The terms of a conservation easement entered into pursuant
38 to Chapter 4 (commencing with Section 815) of Division 2 of Part
39 2 of the Civil Code.

1 (I) *The terms of an open-space easement entered into pursuant*
2 *to the Open-Space Easement Act of 1974 (Chapter 6.6*
3 *(commencing with Section 51070) of Division 1 of Title 5).*

4 (J) *The terms of an agricultural conservation easement entered*
5 *into pursuant to the California Farmland Conservancy Program*
6 *Act (Division 10.2 (commencing with Section 10200) of the Public*
7 *Resources Code).*

8 (K) *The terms of a contract entered into pursuant to the*
9 *Williamson Act (Chapter 7 (commencing with Section 51200) of*
10 *Division 1 of Title 5).*

11 (L) *The listing of the proposed site in the National Register of*
12 *Historic Places or the California Register of Historical Resources*
13 *pursuant to Section 5024.1 of the Public Resources Code.*

14 (c) *A local agency may, if it deems it necessary due to*
15 *circumstances specific to the proposed installation, provide notice*
16 *by placing a display advertisement of at least one-eighth of a page*
17 *in at least one newspaper of general circulation within the local*
18 *agency in which the installation is proposed.*

19 (d) *A local agency may require a small wind energy system to*
20 *be removed if it remains inoperable for 12 consecutive months.*

21 65897. *It is the policy of the state to promote and encourage*
22 *the use of distributed renewable energy systems and to limit*
23 *obstacles to their use, and it is the intent of the Legislature that*
24 *local agencies encourage the installation of distributed renewable*
25 *energy systems by removing obstacles to, and minimizing costs of,*
26 *permitting distributed renewable energy systems.*

27 ~~SECTION 1. The Legislature finds and declares all of the~~
28 ~~following:~~

29 ~~(a) Wind energy is an abundant, renewable, and nonpolluting~~
30 ~~energy resource.~~

31 ~~(b) Wind energy, when converted to electricity, reduces our~~
32 ~~dependence on nonrenewable energy resources, reduces air and~~
33 ~~water pollution that result from conventional sources burning fossil~~
34 ~~fuels, and reduces emissions of greenhouse gases.~~

35 ~~(c) Distributed generation small wind energy systems also~~
36 ~~enhance the reliability and quality of electricity delivered by the~~
37 ~~electrical grid, reduce peak power demands, increase in-state~~
38 ~~electricity generation, diversify the state's energy supply portfolio,~~
39 ~~and make the electricity supply market more competitive by~~
40 ~~promoting consumer choice.~~

1 ~~(d) Small wind energy systems designed for onsite home, farm,~~
2 ~~and small commercial use are recognized by the Legislature and~~
3 ~~the State Energy Resources Conservation and Development~~
4 ~~Commission as an excellent technology to help achieve the goals~~
5 ~~of increased in-state electricity generation, reduced demand on the~~
6 ~~state electrical grid, increased consumer energy independence, and~~
7 ~~nonpolluting electricity generation.~~

8 ~~(e) It is the intent of the Legislature to encourage local agencies~~
9 ~~to support the state's ambitious renewable energy procurement~~
10 ~~requirements by developing and adopting ordinances that facilitate~~
11 ~~the installation of small wind energy systems.~~